Editor's note: Reconsideration denied -- September 22, 1994, Appealed (from 117 IBLA 358) -- Aff'd Civ.No. A93-035 CV (JKS) (D.Alaska July 31, 1995); Affirmed Silas v. Babbitt, 96 F.3rd 355 (9th Cir. 1996)

FRANKLIN SILAS (ON JUDICIAL REMAND)

IBLA 94-249 Decided March 14, 1994

Clarification of the Board decision in Franklin Silas, 117 IBLA 358 (1991) at the request of the United States District Court for the District of Alaska. F-14533.

Decision clarified.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Duty of Department of the Interior to Native Allotment Applicants

   It is proper for BLM to reject a petition for reconsideration of an earlier decision rejecting an Alaska Native allotment when the petitioner has not submitted sufficient evidence of an error in the original application, and there are no compelling legal or equitable reasons for allowing a second opportunity to appeal the merits of that decision 15 years after the expiration of time for appeal from the initial decision.

APPEARANCES: Regina L. Sleater, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management; Kathy J. Keck, Esq., Alaska Legal Services Corp., Fairbanks, Alaska, for Franklin Silas; E. John Athens, Esq., Alaska Department of Law, Fairbanks, Alaska, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

By order dated November 16, 1993, the United States District Court for the District of Alaska remanded Franklin Silas, 117 IBLA 358 (1991), pending before the court sub nom. Franklin Silas v. Bruce Babbitt, et al.,
Case No. A93-035 CV (JKS), to the Interior Board of Land Appeals (Board)
for clarification. Specifically, the court's order asks the Board to state whether the Silas decision "was based upon administrative finality or Silas' failure to provide evidence, or some combination of the two reasons."

Counsel for the Bureau of Land Management (BLM) has suggested that the Board allow the State of Alaska, BLM, and the Native allotment applicant an opportunity to brief the question set forth in the remand order. However,

after having reviewed the Silas decision we do not find further briefing necessary.

BLM rejected Silas' Native allotment application because Silas had stated on the face of his application that his use and occupancy of the land had commenced after the land he sought had been closed to entry. The basis for rejection was clearly stated in the decision. After doing nothing for a period of 15 years, Silas asked BLM to reconsider its decision. After reviewing Silas request for reconsideration, BLM found no basis for reconsidering its original decision.

On appeal, Silas presented no probative evidence in support of his allegations that he had erred when filling out his application, and tendered no explanation of why it had taken him 15 years to realize that he had erred. We specifically held that "the proper basis" for rejecting his petition for reinstatement was "the lack of persuasive evidence supporting the existence of an error in the original application." Id. at 365. That is, Silas had tendered no probative evidence that statements he made when filling out his original application were in error. The passage of 15 years between the BLM decision and seeking reconsideration merely reinforces the underlying assumption that statements he made when filling out his Native allotment application were correct.

The Board decision (Franklin Silas, 117 IBLA 358 (1991)) affirmed the BLM decision on appeal "as modified." On appeal the State and BLM urged the Board to affirm the BLM finding in the decision below that Silas' request for reconsideration was barred by the doctrine of administrative finality. Silas argued that the doctrine should not be used to bar BLM reconsideration of its decision rejecting his application. We recognize that the second from the last paragraph of our decision could be construed as finding administrative finality a basis for affirming the decision below. However, the second from the last paragraph was intended to be an explanation of why we were compelled to affirm the BLM decision as modified. We modified the decision below because we did not find it necessary or desirable to use administrative finality as a basis for denying reconsideration of Silas' application. That question was never reached.

[1] We noted at page 364 of our decision that, if the initial decision was based upon an issue of fact, a Pence v. Kleppe hearing was required, but found that Silas was attempting to create a dispute of fact by claiming that a statement he had made in his application was untrue. No issue of fact existed until Silas claimed error in his petition. BLM properly rejected his petition because he had not submitted sufficient evidence of an error in his application. As noted in the second from the last paragraph of our decision, we found no compelling legal or equitable reasons for allowing a second opportunity to appeal the merits of the 1972 decision 15 years after the expiration of time for appeal from the 1972 decision. Administrative finality was not a basis for affirming BLM's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision in Silas Franklin, supra, is hereby clarified.

R. W. Mullen
Administrative Judge

I concur:

David L. Hughes
Administrative Judge